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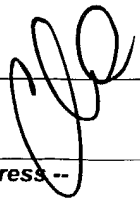
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,011	09/24/2003	Chris Bartlett	4006-0113P	1826
2292	7590	05/04/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER

3751

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/669,011	<b>Applicant(s)</b> BARTLETT, CHRIS	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/24/03</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

***Claim Objections***

2. Claims 4-14 are objected to because of the following informalities: the abbreviation "I.R." in line 1 of claims 4, 7, 10 and 12 lack antecedent and should be replaced with --infrared--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites a limitation "said film" in line 2. It is unclear as to which one is being referred to by that limitation. The same goes for that in line 2 of claim 13.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,317,902 (hereinafter Handwerker).

In regard to claims 1-3 and 10, Handwerker discloses a film for a heat-retaining floating swimming pool cover comprising a plastic film (12) and an infrared absorbent material (see col. 3, line 6-10) contained in the plastic film in an effective amount, but which is insufficient to prevent atmospheric sunlight from substantially penetrating the film (see col. 1, line 34 et seq.).

In regard to claim 11, the plastic film is sealed to a second film (14) so as to form air pockets and wherein the heat generated is sufficient to heat the air in the air pockets.

In regard to claims 12-14, as best understood, the Handwerker amount of the infrared absorbent is sufficient to generate heat so that pool water next to the films is substantially heated and that sunlight passing through the films is capable of substantially heating the pool water since that is the purpose of the Handwerker pool cover.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-9 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Handwerker in view of Wilson, Perez et al., Galbo et al., Suzuki et al., and Mihoya et al.

In regard to claims 4-9, the Handwerker reference does not disclose the specific of the infrared absorbent material but is relying on commercially available material as for example indicated in col. 3, line 37 et seq. Although the Handwerker reference remains

silent as to the specific of the infrared absorbent material as claimed, attention is directed to the Wilson reference, which discloses a well known infrared absorbent material for a pool cover in a form of liquid or powder, such as carbon black (see col. 3, line 5 et seq.); the Galbo et al. reference, which discloses a film having an infrared absorbent material with a formulation containing 0 to 50% of talc by weight (see col. 62, line 29 et seq.), wherein the film can be used in articles such as pool cover (see col. 94, line 20 et seq.); the Suzuki et al. reference, which discloses some equivalent inorganic filler materials including talc and carbon black (see col. 4, lines 7-9) with an average particle size of not greater than 10 microns (see col. 4, lines 18-20); and the Mihoya et al. reference, which discloses some equivalent inorganic filler materials including talc and carbon black (see col. 3, line 1 et seq.).

The Suzuki et al. and Mihoya et al. references appear to indicate that carbon black is an equivalent alternative of talc and that the average particle size of less than 10 microns is well known. The Galbo et al. reference appears to a general amount between 0 to 50% of by weight of talc can be use in an article such as swimming pool. The Wilson reference is indicating the use of a well-known infrared absorbent material such as carbon black in a film of a pool cover.

The specifics of the infrared absorbent material as claimed are obvious variations, which are common in the art of plastic film production. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Handwerker plastic film, the specifics of the infrared absorbent

material as, for example, taught by the above indicated references since the use of such specifics are known in the art of plastic film manufacturing.

In regard to claim 15, the objective of the Handwerker device is to provide an improved heating pool cover without materially increasing the thickness or weight of the cover. However, the Handwerker reference remains silent as to the specific of the thickness of the plastic film. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plastic film with a thickness between 1-40 mm since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

#### ***Double Patenting***

6. Claims 1-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,523,190 B1 (hereinafter Bartlett). Although the conflicting claims are not identical, they are not patentably distinct from each other because the film as claimed in claim 1 of the instant application is similar to the plastic lower film (8) of claim 1 of Bartlett. The limitations of claims 2-15 of the instant application are substantially identical to claims 2-15 of Bartlett.


#### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan N. Nguyen  
Primary Examiner  
Art Unit 3751  
5/2/04

TN